

Exhibit A



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October 28, 2016

**Via E-Mail, First Class Mail,
And Certified Mail, Return Receipt Requested**

Harold L. DeYoung, Owner/Director
DeYoung Family Zoo
N5406 County Rd. 577
Wallace, MI 49893
zoo.education@yahoo.com

The Honorable Sally Jewell
Secretary of the Interior
U.S. Department of the Interior
1849 C St. N.W.
Washington, DC 20240
sally_jewell@ios.doi.gov

Dan Ashe, Director
U.S. Fish & Wildlife Service
1849 C St. N.W., Rm. 3331
Washington, DC 20240
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Re: Notice of Intent to File Citizen Suit Pursuant to the Endangered Species Act

Dear Sirs/Madam:

Pursuant to 16 U.S.C. § 1540(g)(2)(A)(i), this letter constitutes notice that People for the Ethical Treatment of Animals, Inc. (PETA) and Marti McDowell intend to file suit against the DeYoung Family Zoo, a Michigan corporation located at N5406 County Rd. 577, Wallace, MI 49893, and Harold DeYoung as an individual and in his capacity as the director of the DeYoung Family Zoo (collectively "DeYoung"), after sixty days, in federal district court pursuant to 16 U.S.C § 1540(g)(1)(A) for chronic and ongoing violations of the Endangered Species Act (ESA), 16 U.S.C. § 1538(a)(1)(B), and its implementing regulation, 50 C.F.R. § 17.21(c)(1).

Specifically, PETA and McDowell intend to file suit under the ESA against DeYoung to challenge and enjoin the facility's ongoing "take" of the two chimpanzees known individually as Louie and Tommy, unless DeYoung places them in a reputable sanctuary accredited by the

Global Federation of Animal Sanctuaries (GFAS). Chimpanzees are listed as endangered under the ESA, 50 C.F.R. § 17.11(h), and as of September 14, 2015, captive chimpanzees such as Louie and Tommy are included under the Act's protections; *see* 80 Fed. Reg. 34499 (June 16, 2015) (amending the regulatory language of the ESA's special rules to remove the exclusion of captive chimpanzees from the Act's protections).

Louie and Tommy's inadequate and inhumane conditions, described below, "harm"¹ and "harass"² them within the meaning of the definition of "take" under the ESA, 16 U.S.C. § 1532(19). By continuing to confine Louie and Tommy under these conditions, DeYoung is in violation of the ESA, 16 U.S.C. § 1538(a)(1)(B), and its corresponding regulation, 50 C.F.R. § 17.21(c)(1), which unequivocally prohibit the "take" of chimpanzees and make it unlawful to wound, harass, or harm them, 16 U.S.C. § 1532(19).

PETA has secured placement for Louie and Tommy at an appropriate GFAS-accredited sanctuary and will arrange the placement, transport, and veterinary care necessary for their relocation, should DeYoung wish to correct the ESA violations described below. This sanctuary would provide Louie and Tommy with a large, complex environment that would give them the opportunity to climb, explore, and express species-typical behavior. Through a gradual, safe introduction process, it would also offer Louie and Tommy the opportunity to socialize with other chimpanzees to the extent that each chooses.

DeYoung isolates Louie and Tommy from any other member of their species and denies them a safe, complex environment.

In nature, chimpanzees live in groups and interact with members of their community in myriad and complex ways. They lead active, stimulating lives and form deep and lasting social bonds, which are critical to their long-term health and psychological well-being. They live in multi-male, multi-female, multi-generational communities with unique cultural customs. They have sophisticated methods of communication—through calls, body language, and facial expressions—and engage in affectionate social grooming. Male chimpanzees remain with their natal families for their entire lives and form close social bonds with other males in order to hunt cooperatively, establish social order, protect their mates, and maintain territorial boundaries.

Even though Louie and Tommy are members of a highly social endangered species, the DeYoung Family Zoo confines them in isolation. Louie has been denied the companionship of a single other chimpanzee for the entire six years that DeYoung Family Zoo has held him, nearly his entire life, and Tommy has been denied the companionship of another chimpanzee since his arrival at DeYoung Family Zoo in September 2015. According to the world's leading experts, long-term solitary confinement is extremely distressing for chimpanzees. Louie experienced the psychological trauma of being removed from his mother shortly after birth and has lived in isolation from other chimpanzees during his formative years, which, in terms of emotional trauma, is analogous to placing a human toddler in solitary confinement. It is well-established

¹ "Harass" is defined by regulation as "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering." 50 C.F.R. § 17.3.

² "'Harm' . . . means an act which actually kills or injures wildlife." *Id.*

that isolation and human-rearing of a chimpanzee has long-term negative effects on his behavior and well-being. In the opinion of experts, by holding Louie and Tommy isolated from any other chimpanzee, DeYoung is failing to meet the standard of care that they require to be psychologically healthy, and to remain in such conditions would further impair their psychological well-being and development and lead to captive neuroses.

Denying animals the opportunity to engage in species-typical behavior, such as climbing, foraging, social grooming, and play, is also a significant source of stress. Louie is currently at an age when he should be spending his days with other chimpanzees, playing, grooming, and learning species-typical behaviors. Instead, he is confined to a wire cage that lacks sufficient space, both horizontally and vertically, to allow him to express the physical behaviors of a chimpanzee, and he is deprived of appropriate enrichment items and experiences.

Tommy is apparently confined *indoors in isolation constantly*. Louie is also apparently confined indoors constantly during the colder months on the Upper Peninsula—for as long as nearly half the year. Chimpanzees are native to the tropical climate of Equatorial Africa. In contrast, the average daily maximum temperature in the Upper Peninsula is 24.6° in December and 20.5° in January, with average daily minimum temperatures below 10° and average snow accumulation of nearly 38 inches in each of those months. The average temperatures are similar during November, February and March. While captive chimpanzees can enjoy spending some time in the snow, their caretakers must provide additional enrichment to accommodate any increase in time spent indoors during those months. There is no indication that DeYoung Family Zoo—which does not provide Louie and Tommy an adequate outdoor environment and enrichment opportunities during warmer months and keeps them isolated from other chimpanzees—is making those necessary accommodations. In addition, captive chimpanzees who are not permitted outdoors at all, whether during the winter or throughout the year, are susceptible to vitamin D deficiencies and rickets. The apparent conditions in which Louie and Tommy are kept simply cannot provide either endangered chimpanzee with appropriate enrichment, space, and opportunities to engage in species-specific behaviors. As owner/director of DeYoung Family Zoo, Harold DeYoung directly controls the conditions in which Louie and Tommy are kept, including the specifications of the enclosures in which they are kept, the enrichment opportunities provided to them, the extent to which they are exposed to the public, and their interaction with other members of their own species.

The U.S. Department of Agriculture (USDA), which administers the Animal Welfare Act (AWA), a separate federal law that establishes the *minimum* animal-care and handling standards for both endangered and non-endangered captive animals used in exhibitions such as by DeYoung, has acknowledged that “[s]ocial interactions are considered to be one of the most important factors influencing the psychological well-being of most nonhuman primates.” USDA, Animal & Plant Health Inspection Service, *Final Report on Environment Enhancement to Promote the Psychological Well-Being of Nonhuman Primates* § IV.A (1999) [hereinafter “USDA Primate Report”]. Companions provide *more* than just social company. They supply “environmental novelty, multi-sensory stimulation, something to manipulate, and opportunities for cognitive challenge and control.” *Id.* § IV.A.10. Hence, “[a]ppropriate social enhancement is one of the most versatile and option-laden forms of enhancement we can provide” to chimpanzees. *Id.* Because “social primates are very much physical contact animals,” the USDA

underscores that “[c]ontinuous full contact housing, in pairs or appropriately structured social groups allows primates to express sophisticated social adaptations.” *Id.* § IV.A.9.

In addition, “[t]he social, developmental, and physical environment are interdependent in enhancing psychological well-being” of primates, and the components of the animal’s physical environment “should combine to create opportunities for species-typical resting, exploration, play, and foraging, as well as social interaction and adjustments.” *Id.* § IV.C. Adequate enclosure space “is not just a question of numeric dimensions or total volume, but also one of shape and design. The space must be structured to be useable and species appropriate. This can be achieved through a variety of furnishings, projections, contours and floor coverings.” *Id.* As such, “[u]se of legal cage size will not always meet an animal’s behavioral requirements.” *Id.* Environmental enhancement should therefore include opportunities to express species-typical behaviors, such as:

- Foraging, which provides chimpanzees with “[m]ental stimulation . . . by requiring them to complete cognitive tasks to obtain their food,” *id.* § IV.D.1;
- Nest-building, *id.* § IV.C.7 (“Many chimpanzee experts consider the provision of bedding material to chimpanzees essential for their comfort”);
- Climbing, *id.* § IV.C.6 (studies have found that of all primates, “chimpanzees used upper levels of enclosures and perimeter areas the most”); and
- Play and tool use, *id.* § IV.E.

Hence, regulations issued by the USDA to implement its obligations under the AWA require that animal exhibitors “develop, document, and follow an appropriate plan for environment enhancement adequate to promote the psychological well-being of nonhuman primates.” 9 C.F.R. § 3.81. This plan must include “specific provisions to address the social needs of nonhuman primates of species known to exist in social groups in nature” and “must be in accordance with currently accepted professional standards, as cited in appropriate professional journals or reference guides.” *Id.* “The central idea” of this regulation “is that nonhuman primates must be given an environment in which they can express the wide range of behaviors practiced by others of their species in nature. Their captive environments must be enhanced to give them opportunities to exhibit these behaviors. When such conditions are achieved, the intent of the Animal Welfare Act to promote their psychological well-being will be fulfilled.” USDA Primate Report § II.E (1999).

Furthermore, 9 C.F.R. § 3.81(c)(1) mandates that “[i]nfants and young juveniles” must be provided with special considerations for environmental enhancement and § 3.81(c)(5) requires that great apes must have “additional opportunities to express species-typical behavior.” The AWA regulations provide the absolute minimum standards that must be met in order to obtain a license to exhibit animals under that law, but compliance with the regulations does not indicate

compliance with the ESA, which provides heightened protections to endangered species. Yet DeYoung has failed to meet even these minimum standards.

The DeYoung Family Zoo continues to deny Louie and Tommy an environment in which each can “express the wide range of behaviors” that chimpanzees exhibit in nature.³ Nor does it “create opportunities for species-typical resting, exploration, play, and foraging, as well as social interaction and adjustments.” Since 2010, Louie has lived without another chimpanzee and is confined to a small, simple outdoor enclosure during warmer months and apparently to a tiny indoor space for several months of each year. For the past year, Tommy has apparently been confined indoors at all times with no other chimpanzee. Depriving Louie and Tommy of the social interaction and psychological stimulation fundamental to their physical, social, and psychological well-being constitutes a take in violation of the ESA.

To be sure, however, it would *not* remedy the violations for DeYoung to decide to house Louie and Tommy together. Because of the unpredictability of each’s response to the other and the potential for Tommy, an approximately forty-year-old adult, to harm juvenile Louie—who has never lived with another chimpanzee and thus has not yet learned appropriate social behaviors—any introductions between Louie and Tommy, or between each and another chimpanzee, must be done by experts with the experience, knowledge, and resources to carry out such introductions safely. Harold DeYoung, his partner Carrie Cramer, and the DeYoung Family Zoo lack the fundamental training and experience to manage such an introduction, the facilities necessary for its safe execution, and the staff necessary to supervise the chimpanzees round-the-clock to ensure that one or both are not harmed. However, unlike DeYoung, the GFAS-accredited facility at which PETA has secured placement possesses all of those necessary resources: expert staff who have successfully introduced dozens of chimpanzees; state-of-the-art facilities that are designed for safe, gradual introductions; and a staff with both the numbers and the experience to oversee the animals before, during and for an extended period after their introduction to each other or potentially more compatible companions.

In addition, it would not remedy the violations but could instead lead to separate ESA violations for DeYoung to obtain other chimpanzees or transfer Louie and Tommy to another zoo or private party through interstate transactions, absent a permit issued only for limited purposes, not including for private ownership or public display. *See, e.g., Elephant Justice Project v. Woodland Park Zoological Soc’y, Inc.*, No. C15-0451-JCC (W.D. Wash. Apr. 7, 2015).

DeYoung exposes Louie to harassment by visitors.

For captive animals such as Louie, “[p]erhaps the greatest stressor[s] are those over which the animal has no control and from which they cannot escape.” Kathleen Morgan & Chris Tromborg, *Sources of Stress in Captivity*, 102 *Applied Animal Behav. Sci.* 262, 264 (2007). In primates, the presence of human visitors has been shown to increase aggression and reduce species-typical behavior such as grooming, foraging, and play in chimpanzees. *Id.* at 280.

³ The USDA has cited DeYoung for lack of an environmental enhancement plan for nonhuman primates. USDA Inspection Report 1 (June 29, 2010). While there hasn’t been a recent citation for lack of an enrichment plan, citations are completely discretionary and their absence does not indicate compliance.

“[A]versive experiences with humans result in animals that are more fearful of humans and more distressed by human presence, and this is reflected both behaviorally and physiologically.” *Id.* at 281. For this reason, the USDA recommends that “[f]or primates on public display, there is no reason not to maintain long distances between the viewing public and the primate.” USDA Primate Report § IV.C.6 (1999).

In the outdoor enclosure at the DeYoung Family Zoo where he is kept, Louie is subjected to the gaze, chants, or other noise of visitors who have come to gawk at him. Louie has reacted in such situations by displaying and throwing sand or dirt at visitors. Subjecting Louie to harassment by visitors constitutes a take in violation of the ESA.

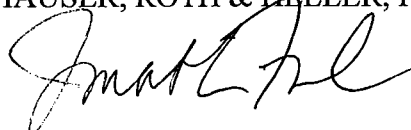
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Please be advised that the conditions set forth herein violate the ESA’s prohibition on the “take” of Louie and Tommy. Unless the violations described herein cease immediately, PETA and McDowell intend to file suit against the DeYoung Family Zoo under the ESA at the expiration of sixty (60) days following October 28, 2016. Pursuant to the ESA, the plaintiffs will seek declaratory relief and an injunction against continued violations, including, but not limited to, requesting that the court order the transfer of Louie and Tommy to a GFAS-accredited sanctuary, as well as attorney’s fees and litigation costs.

As discussed above, PETA has secured a place for Louie and Tommy at a GFAS-accredited sanctuary. Should the DeYoung Family Zoo wish to cure the violations described herein and thereby avoid litigation, it should contact me immediately in order to facilitate placement. Any and all communication related to this matter should be directed to me.

Sincerely yours,

MADDIN, HAUSER, ROTH & HELLER, P.C.

A handwritten signature in black ink, appearing to read "Jonathan B. Frank", written over a horizontal line.

Jonathan B. Frank

JBf/az